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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 70

ALITALIA-LINEE AEREE ITALIANE, S.p.A.,

Petitioner,

—v.—

JOHN LISI, *et al.*,

Respondents.

MEMORANDUM OF PETITIONER IN OPPOSITION TO MOTION OF ARNOLD HOLTZMAN FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

AUSTIN P. MAGNER
GEORGE N. TOMPKINS, JR.
Counsel for Petitioner
One Rockefeller Plaza
New York, New York 10020

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Consent to the filing of a brief as *amicus curiae* by ARNOLD HOLTZMAN was refused by petitioner because applicant, in his request, failed to specify any facts or questions of law, relevant to the disposition of this case, that will not adequately be presented by the existing parties.

Applicant is a plaintiff in a suit pending in the Supreme Court of the State of New York wherein he seeks to recover damages for alleged personal injuries sustained in an aircraft accident. Applicant's rights in that case are subject to the provisions of the same Treaty[1] as involved herein, but no issue has been raised by him in that case concerning the conformity of his passenger ticket to Treaty

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[1] Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Warsaw October 12, 1929, 49 Stat. 3000; T.S. 876 (commonly referred to as the Warsaw Convention.)

requirements. Nevertheless, any interest of applicant in the outcome of this case is precisely co-extensive with the interests of respondents herein, and will adequately be presented by counsel for respondents. These issues are sharply drawn and do not admit of any third perspective, such as that attempted to be interjected by applicant and his counsel. See Motion of Arnold Holtzman, Page 5. Counsel for applicant concededly intends to add cumulative argument and materials with regard to these issues.

Counsel for applicant manifests concern over whether counsel for respondents will adequately present the position of respondents to this Court. He need have none, for counsel for respondents is able and zealous, and far more experienced in the field of aviation law than counsel for applicant.[2]

There are more than one hundred cases pending in the Courts of the United States today, both State and Federal, in which damages are being sought for personal injury and death of passengers whose rights are subject to the provisions of the Warsaw Convention. The interests of the parties to those cases in the issues before the Court in this case, are identical to the interests of the existing parties herein. To permit one of the parties in those cases to file a brief as *amicus curiae* in this case would create a precedent for the filing of briefs by all such parties, even though in virtually all cases the motivation would not be concern with the adequacy of presentation of the position of respondents herein, but rather the desire of counsel to have their name associated with a case being reviewed by this Court.

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[2] The firm of which counsel for applicant is a member sought leave to intervene in their own right in this case before the Court of Appeals. This application was summarily denied by the Court of Appeals.

For the foregoing reasons, petitioner respectfully requests that the motion of ARNOLD HOLTZMAN, for leave to file a brief as *amicus curiae*, be denied in all respects.

Respectfully submitted,

AUSTIN P. MAGNER
GEORGE N. TOMPKINS, JR.
Counsel for Petitioner
One Rockefeller Plaza
New York, New York 10020

November 28, 1967

Certificate of Service

I hereby certify that I have this 28th day of November, 1967, served the foregoing memorandum upon respondents, the International Air Transport Association, the Air Transport Association of America, the United States, the United Kingdom of Great Britain and Northern Ireland, the Republic of Italy, and Arnold Holtzman, by depositing same in the United States mailbox at One Rockefeller Plaza, New York, New York 10020, with first class postage prepaid addressed to the respective attorneys of record as follows:

THEODORE E. WOLCOTT
Attorney for Respondents
36 West 44th Street
New York, New York 10036

THE SOLICITOR GENERAL
Department of Justice
Washington, D.C. 20530

HAROLD L. WARNER, JR.
Attorney for the International Air Transport Association
25 Broadway
New York, New York 10015

JOHN E. STEPHEN
JOSEPH F. HEALY, JR.
Attorneys for Air Transport Association of America
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

EDWIN LONGCOPE
Attorney for the United Kingdom of Great Britain and Northern Ireland
26 Broadway
New York, New York 10004

ALFRED C. CLAPP
Counsel for the Republic of Italy
744 Broad Street
Newark, New Jersey

STUART M. SPEISER
Counsel for applicant Arnold Holtzman
200 Park Avenue
New York, New York 10017

GEORGE N. TOMPKINS, JR.
Counsel for Petitioner